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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,527	11/14/2001	Robert L. Newell	A-00.101.1	8399

7590

10/08/2003

Arthur Jacob
25 East Salem Street
P.O. Box 686
Hackensack, NJ 07602

EXAMINER

MANAHAN, TODD E

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

NK

Office Action Summary

Application No.

09/993,527

Applicant(s)

NEWELL, ROBERT L.

Examiner

Todd E. Manahan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4 and 6-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leone (U.S. Patent No. 5,611,361) in view of either Burns (U.S. Patent No. 5,022,112) or O'Brien et al (U.S. Patent No. 5,032,456).

Leone discloses a mascara brush wherein the bristles are placed in a spiral arrangement having a plurality of turns around a support. The bristles have a diameter of about 2.5 to 3.5 mils and the brush has more than 60 and up to 120 bristles within each turn of the spiral (see col. 3, lines 19-30). Leone discloses the invention essentially as claimed except for the bristles having a textured surface modified to include a multiplicity of indents. Both Burns and O'Brien disclose bristles for applicator brushes in which the surface thereof has been modified to include a multiplicity of indents so as to provide a rough surface which enhances the ability to hold the product. It would have been obvious to one of ordinary skill in the art to provide the bristles of the brush of Leone with a textured surface modified to include a multiplicity of indents in view either O'Brien et al or Burns in order to in order to enhance the bristles ability to hold the product. Regarding claims 3 and 8, to form the bristles of nylon 6.12 would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

Art Unit: 3732

suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leone in view of either Burns or O'Brien et al as applied to claims 1 and 6 above, and further in view of Fitjer (U.S. Patent No. 5,161,554).

Fitjer discloses a brush having bristles which have been modified to include a non-uniform wavy appearance in order to imitate the look and feel of natural bristles and improve the pickup and lay-off of cosmetic. It would have been obvious to one of ordinary skill in the art to modify the bristles to include a non-uniform wavy appearance in order to imitate the look and feel of natural bristles and further improve the pickup and lay-off of cosmetic..

Response to Arguments

Applicant's arguments with respect to claims 1-4 and 6-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

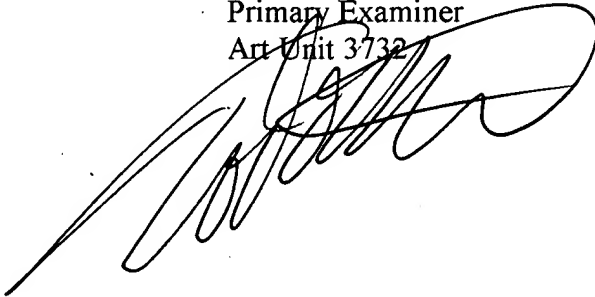
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 703 308-2695. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 3732

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0858.

Todd E. Manahan
Primary Examiner
Art Unit 3732

A handwritten signature in black ink, appearing to read 'T. E. Manahan', is written over the printed name and title.

T. E. Manahan
07 October 2003